

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 1872 of 2005

Date of Decision: 10.10.2006

Jarnail Singh and another

...Appellants

Versus

Rajbir Singh and others

....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri S.S. Rangi, Advocate, for the appellants.

Shri J.S. Bhandohel, Advocate, for respondent No.1.

JUDGMENT

The defendants are in second appeal aggrieved against the judgment and decree passed by the learned first Appellate Court, whereby the suit for possession by way of partition of the suit land, was decreed.

The plaintiff has filed the suit for possession by partition of land measuring 4 marlas purportedly purchased by him vide registered sale deed dated 22.10.1998. The learned first Appellate Court has decreed the said suit on the basis of the judgment Exhibit P.2 in an earlier suit filed by the defendant-appellants, wherein the plaintiff has relied upon the sale deed dated 22.10.1998, regarding purchase of 4 marlas of land. In the said suit issue No. 2 was framed to the effect 'whether the defendant has purchased the land from Sukhwinder Singh, vide sale deed dated 27.10.1998 for a sum of Rs.8000/-.' Such issue was decided in favour of plaintiff No.1- Rajbir Singh, the present plaintiff. On the basis of the findings recorded in the previous suit, the learned first Appellate Court, has

found that the plaintiff is entitled to separate possession by partition of the joint land.

Learned counsel for the appellant has referred to **Gram Panchayat of Village Naulakha v. Ujagar Singh & Ors. 2000(2) Apex Court Journal 501 (SC)**, to contend that earlier suit was for permanent injunction and, therefore, any incidental finding on title is not binding on the latter suit. However, I do not find any merit in the said argument raised by the learned counsel for the appellants. There is no dispute about the proposition laid down in the said judgment. But in the previous case, issue No. 2 was specifically framed in respect of title of defendant in the said suit (the plaintiff herein). It was held that Rajbir Singh is the owner of the land measuring 4 marlas having purchased the same from Sukhwinder Singh. The said suit for permanent injunction was decreed and the defendant was restrained from taking physical possession of any portion of the joint property till its partition. It was held that the defendant has purchased the suit land. The present suit for partition was filed thereafter and the same has been rightly decreed by the learned first Appellate Court.

In view of the above, I do not find any patent illegality or irregularity in the findings recorded by the learned first Appellate Court, which may raise any substantial question of law in the present appeal.

Hence, the present appeal is dismissed.

10-10-2006
ds

(HEMANT GUPTA)
JUDGE